

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TERRENCE FITCH,

Plaintiffs,

v.

Case No. 23-CV-82

TONYA ROSALES and
JOSEPH LACROIX,

Defendants.

**DEFENDANT JOSEPH LACROIX AND TANYA ROSALES’
AMENDED NOTICE OF MOTION AND
AMENDED RENEWED MOTION TO DISMISS**

PLEASE TAKE NOTICE that Defendants Joseph Lacroix and Tanya Rosales, by their attorneys City Attorney Evan Goyke and Assistant City Attorney Maria Mesoloras, renew their motion to the Court to dismiss this case for failure to prosecute pursuant to Fed. R. Civ. P. 41(b), and show as follows:

1. On August 21, 2024, Defendants filed a motion to dismiss for failure to prosecute (*see* ECF 66), noting that Plaintiff has continued to fail to comply with the Court’s scheduling order, including having failed to serve his initial disclosures despite that they were due April 10, 2024, despite that counsel for Defendants sent him a reminder letter on July 23, 2024 requesting he serve Defendants with the disclosures within thirty days, and despite that Defendants complied with the scheduling order and timely served Plaintiff with their initial disclosures. In that motion to dismiss for

failure to prosecute, Defendants noted that Plaintiff's failure to serve initial disclosures was not the first time Plaintiff failed to comply with court orders and/or failed to coordinate with Defendants as required to meet court-imposed deadlines, and listed specific instances of non-compliance. *See* ECF 66, pg. 3-5.

2. On September 30, 2024, the Court issued an Order (ECF 69) denying Defendants' motion to dismiss for failure to prosecute, but the Court warned Plaintiff in no uncertain terms, in bold, italicized font: "Plaintiff is hereby warned that failure to comply with the Federal Rules of Civil Procedure or court orders will result in dismissal of this case." ECF 69, pg. 2. The Court further stated, "I will give plaintiff until October 21, 2024, to provide the defendants with the information required by Rule 26(a)(1). If plaintiff fails to comply by that date, defendants may renew their motion and I will dismiss the complaint and this action pursuant to Rule 41(b) for failure to prosecute and failure to comply with court order." ECF 69, pg. 2.
3. October 21, 2024 has come and gone, and Defendants still have not been served with Plaintiff's initial disclosures.
4. Additionally, Plaintiff has failed to acknowledge or respond to Defendants' First Set of Discovery Requests, which were mailed to him via Certified Mail on September 4, 2024, received by him on September 11, 2024, and due within thirty days of receipt—and are now well past due. *See* ECF 74-2.

5. Plaintiff continues to ignore the court's scheduling order, the court's September 30, 2024 order, and Defendants' discovery requests (the responses for which were due nearly two weeks ago), yet has been serving various persons with subpoenas (*see* ECF 73-2, 74-1, and 78-1) regarding this case and issuing his own discovery requests to Defendants (*see* ECF 70 and 71). This suggests Plaintiff is willfully choosing to disregard the court's orders and the Federal Rules of Civil Procedure in favor of litigating this case on his own terms and depriving Defendants of their right to defend themselves.

Plaintiff's failure to comply with the Court's order has accumulated into sufficient basis to dismiss based on a failure to prosecute under FRCP 41(b). Accordingly, Defendants respectfully request that the Court, having already explicitly warned Plaintiff of the consequences for continued failure to comply with the Federal Rules of Civil Procedure or court orders, dismiss this case.

Dated and signed at Milwaukee, Wisconsin this 22nd day of October, 2024.

EVAN GOYKE
City Attorney

/s/ Maria Mesoloras
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